

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	)	)
AMERICAN CLASSIC VOYAGES CO., <i>et al.</i> ,	)	District Court
Debtors.	)	Civil Action No. 04-01415 (JJF)
AMERICAN CLASSIC VOYAGES CO., <i>et al.</i> ,	)	)
DEBTORS, by and through PAUL GUNTHER,	)	Chapter 11
PLAN ADMINISTRATOR,	)	Bankruptcy Court
Plaintiff/Appellee,	)	Case No. 01-10954 (LHK)
v.	)	(Jointly Administered)
WESTAFF,	)	)
Defendant/Appellant.	)	Adv. Pro. No. 03-56886 (PBL)

**APPELLANT'S MOTION FOR EXTENSION  
OF TIME TO FILE APPELLANT'S OPENING BRIEF**

Westaff (USA), Inc., the Appellant herein, respectfully submits this *Motion for Extension of Time to File Appellant's Brief* (the "Motion to Extend") in the above-noted appeal.

**BACKGROUND**

1. The above-noted adversary proceeding is a suit to avoid and recover preferential transfers. The Appellant filed a motion to dismiss the complaint (the "Motion to Dismiss") in the adversary proceeding on June 23, 2004 and the parties briefed the Motion. By order dated October 1, 2004, the Bankruptcy Court (Hon. Paul B.

Lindsey, presiding) entered an order (the “Order”) denying the Motion to Dismiss. This civil action (the “Action”) is an appeal of the Order.

2. Effective April 15, 2005, the undersigned changed law firms. On April 28, 2005, this Court entered a scheduling order (the “Order”) with a default briefing schedule providing that the Appellant was to file its opening brief on or before May 13, 2005. The Order notes that its default briefing schedule may be amended by a briefing schedule to be agreed upon by the parties. The Order was served upon counsel at his previous firm.

3. Owing to the complexities of the undersigned’s transition, there was a brief delay before the undersigned could procure appropriate documents transferring the file to the new law firm. Appellant has completed that process regarding this Action, however, and expects to file a notice of substitution of counsel contemporaneously herewith. At any rate, the Appellant was unable to and did not file its opening brief on May 13, 2005.

4. The undersigned requested (on May 18, 2005) that the Appellee agree to a consent form of briefing/scheduling order, as contemplated by the Order, to extend the Appellant’s time to file its opening brief. Appellee, however, will not consent. Accordingly, the Appellant requests an extension hereby.

5. Additionally, counsel to the Defendant will be having in-patient jaw surgery at a Philadelphia hospital on **May 25, 2005**. The surgery is extremely serious and will require (a) that counsel stay in the hospital for several days and (b) a minimum

recovery period of at least two weeks. Counsel is informed that after the surgery, he will be unable to talk, come to the office or work for the first 10 days or so, and it will be very difficult to do anything at all prior to about **June 10, 2005**.

6. Needless to say, counsel chose neither the briefing schedule nor the date of the surgery, and counsel does not have the ability to change the date of the surgery, as it was established based on the availability of the operating room, surgical staff, etc. In view of the above-noted circumstances, the Appellant respectfully submits that the requested extension is warranted, appropriate and reasonable.

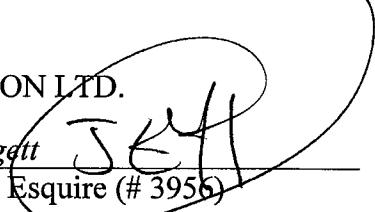
**BASIS FOR THE RELIEF REQUESTED**

7. No citations are needed for the proposition that the Court has authority to control its own docketing and scheduling. The Appellant has set forth the above clear and understandable reasons for the requested extension of time. No party would be prejudiced if the extension is granted.

**WHEREFORE**, the Appellant respectfully requests entry of an order granting it an extension until **June 25, 2005** to file and serve its opening brief.

Dated: May 18, 2005

Respectfully submitted,  
HARVEY, PENNINGTON LTD.

By: /s/ James E. Huggett   
James E. Huggett, Esquire (# 3956)  
"J" Jackson Shrum, Esq.  
913 N. Market Street, 7<sup>th</sup> Floor  
Wilmington, Delaware 19801  
(302) 351-1125 (telephone)  
(302) 428-0734 (fax)  
jhuggett@harvpen.com

*Counsel to Westaff (USA), Inc. / Appellant*